



DEPARTMENT OF JUSTICE

Antitrust Division

JOEL I. KLEIN

Assistant Attorney General

Main Justice Building

950 Pennsylvania Avenue, N.W.

Washington, D.C. 20530-0001

(202) 514-2401 / (202) 616-2645 (f)

antitrust@justice.usdoj.gov (internet)

http://www.usdoj.gov (World Wide Web)

March 25, 1998

John B. Wyss, Esq.
Wiley, Rein & Fielding
1776 K Street, NW
Washington, D.C. 20006

Dear Mr. Wyss:

This letter responds to your request on behalf of the Personal Communications Industry Association ("PCIA") for the issuance of a business review letter pursuant to the Department of Justice's business review procedure, 28 C.F.R. § 50.6. You have requested a statement of the Department's current antitrust enforcement intentions regarding the proposed establishment and operation by PCIA of a Site Search Clearinghouse ("SSC"), an information exchange system designed to facilitate the identification of opportunities for the joint acquisition, construction and/or operation of wireless communications antenna sites. Based on the information and assurances that you provided, the Department has no current intention to challenge the establishment and proposed activities of the SSC by the PCIA.

The PCIA is a trade association that seeks to advance the interests of firms that provide wireless and mobile communications services (including cellular, PCS, paging and two-way dispatch). In providing such services, its members usually utilize an integrated network of antenna sites, telephone lines, and switching stations to get their service offerings to the public. You assert that obtaining appropriate antenna sites has become more difficult and time consuming because of the increased aesthetic and environmental concerns of local authorities. Indeed, you indicate that some local authorities have even required wireless carriers to demonstrate that they have exhausted co-location, i.e., joint antenna site operation, possibilities as a condition of obtaining approval of a new antenna site. Consequently, to expedite regulatory approval and reduce other costs, PCIA proposes to create an information exchange, the SSC, through which wireless carriers would be able to learn in a timely manner whether another

carrier is interested in building an antenna in an area suitable for joint construction and operation.

In your letter, you indicate that a wireless carrier planning to expand its system will first identify generally the geographic area in which the necessary new antenna sites must be located. Engineering studies will be undertaken subsequently to identify specific search “rings” for these potential sites. Each ring typically is designated by a search “dot,” reflecting the latitude and longitude of the optimal location, together with a search “radius” (e.g., ½ mile), indicating the amount of flexibility available for locating the facility “off dot.” When a carrier begins the active site acquisition/construction process in a particular area, it can, with some effort, identify existing structures in the search area on which additional antennas could be mounted. There is, however, no reliable mechanism by which a carrier can ascertain whether any other companies may be planning to construct new antenna sites in the same area.

To effectively pursue co-location opportunities, carriers need to know well before a zoning application is filed that another carrier is actively looking for an antenna site in the same search area. At that time, the interested carriers can enter negotiations for the joint acquisition and construction of a single facility that will meet their respective technological needs. As part of this process, they can attempt to negotiate adjustments to the specific location and physical characteristics of the proposed facility so that it can be readily integrated into each carrier’s overall network. Although the fact that another company is proposing the construction of a new tower facility becomes public knowledge when a zoning application is filed, by that time it may be too late for other interested carriers to work out a suitable co-location arrangement.

Under your proposal, a member carrier seeking to begin an expansion program may submit search ring information for its proposed antenna sites to PCIA for entry into the SSC database. The search ring information would be in the form of the latitude and longitude of the optimal site location, together with one of several specified search radii (e.g., 1/4 mile, ½ mile, 3/4 mile, etc.). The SSC system would identify any instances in which one of the proposed search rings submitted by the carrier overlaps with a search ring previously entered into the database by another carrier within the prior six months. In such situations, the SSC system would notify both carriers of the potential co-location opportunity. The notification would be limited solely to (a) the identity of the specific search ring submitted by the notified carrier that may present a co-location opportunity; (b) the identity of the other carrier that is also seeking an antenna site in the same area; and, (c) the name, address and phone number of the individual at the other carrier who has been designated to handle SSC notifications and inquiries.

Once both carriers have been notified, the SSC would play no further role in any subsequent co-location efforts. It would be up to each individual carrier to determine whether to pursue a possible bilateral co-location arrangement with the other carrier. Should the carriers decide to pursue bilateral negotiations, they would do so independently and neither SSC nor PCIA would have any involvement in those discussions.¹

You have also indicated that access to the SSC would not be restricted. All licensed wireless carriers will be permitted to participate in the SSC system, whether or not they are members of PCIA, on fair and reasonable terms. To the extent the system also includes data concerning existing sites, all owners of potential sites will be encouraged to submit data and charged only a nominal fee.

The limited nature of the information that would be exchanged through the SSC leads the Department to conclude that such exchanges are not likely, by themselves, to have anticompetitive effects. Nor do we believe, based on your assurances, that the exchanged information would be likely to lead to or facilitate other ancillary or independent agreements that would subvert competition.

While the exchange of broad expansion plans between rivals certainly could raise antitrust risks, the limited type of information to be exchanged through the SSC system should have no anticompetitive effects. The fact that a carrier has entered the active site acquisition/construction phase in a particular geographic area within its licensed market is not particularly sensitive information and generally becomes public knowledge within a relatively short period of time. The SSC system will only notify carriers about the existence of individual search ring overlaps, and will not be used to exchange competitively sensitive long-range plans for system implementation and enhancement.

Since SSC will not be involved in any specific discussions or negotiations between carriers regarding individual co-location opportunities, the proposal also seems designed to

¹ The SSC database may also include the capability to accept information regarding existing structures that could be used for mounting wireless communications antennas. The owner of an existing tower or building would submit the latitude and longitude of its facility, together with the name, address and telephone number of a contact individual, for entry into the database. If the structure falls within a search ring previously submitted by a licensed carrier, the carrier would be notified of the new site listing. Similarly, when a carrier submits its proposed search ring data, the SSC system would provide that carrier with a list of any existing structures contained in the database that fall within each such ring. That would end the SSC's role. Any resulting negotiations would be limited to the parties.

avoid the risk that the SSC might be used as a conduit for anticompetitive exchanges of information.

We can not predict on an a priori basis that a particular agreement reached by wireless carriers concerning the joint acquisition, construction, and/or operation of individual antenna sites would or would not have anticompetitive effects. You state that the costs associated with building and operating any individual site would represent only a small fraction of each carrier's total system costs -- well below the 20% safe harbor threshold for joint purchasing arrangements that the Department has employed in other contexts. In that case, such agreements would not be likely in themselves to provide rivals with such a high degree of common costs as to mute price rivalry.

Nor would we predict that co-location agreements would anticompetitively depress market prices for antenna sites. The real estate most suitable for antenna sites in all likelihood has other valuable commercial uses. To the extent that is the case, the market for potential purchasers of such real estate would include firms other than wireless carriers thereby significantly reducing the possibility that individual co-location agreements between two or more wireless carriers would have any monopsony effect.

You also submit that the access provisions adopted by PCIA have been designed to avoid antitrust risks. There are no competitively significant restrictions on access to the SSC system. All carriers, whether or not members of PCIA, may use the SSC system on fair and reasonable terms. Moreover, each carrier remains free to use or not use the SSC system as it sees fit, and may pursue potential co-location opportunities independently of the SSC.

Moreover, it is possible, as you submit, that the proposed limited information exchange system might have a procompetitive effect. To the extent that regulatory officials are either requiring co-location or seeking to minimize the number of antenna sites for aesthetic or environmental reasons, the proposal could reduce the regulatory barriers to entry and thereby facilitate greater competition against the incumbent phone and cellular carriers. The joint acquisition, construction and operation of antenna facilities might also engender cost savings that, in a competitive environment, could flow, at least in part, to consumers.

This letter expresses the Department's current enforcement intentions, and is predicated on the accuracy of the information and assertions that you have presented to us. In accordance with its normal practice, the Department reserves the right to bring an enforcement action in the future if the actual activities of the SSC or its members prove to be anticompetitive in any purpose or effect.

John B. Wyss, Esq.
Wiley, Rein & Fielding
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This statement is made in accordance with the Department's business review procedure, 28 C.F.R. § 50.6. Pursuant to its terms, your business review request and this letter will be made publicly available immediately, and any supporting data will be made publicly available within thirty days of the date of this letter, unless you request that any part of the material be withheld in accordance with Paragraph 10(c) of the business review procedure.

Sincerely,

/s/

Joel I. Klein
Assistant Attorney General

Enclosure